

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of)	
)	OAH No. 16-0198-ADQ
K R. N E D)	FCU No.
_____)	Agency No.

DECISION AND ORDER

I. Introduction

K R. N E D applied for and received Food Stamp¹ benefits in Alaska in October of 2015. The Department of Health and Social Services, Division of Public Assistance (DPA) later found that she had failed to disclose that she was receiving benefits from the State of Washington at the same time, and on March 3, 2016 it initiated an Administrative Disqualification case against her, alleging she had committed a first Intentional Program Violation (IPV) of the Food Stamp program.²

The hearing first convened on April 6, 2016, with Ms. N E D having been provided advance notice of the hearing by both certified mail and standard First Class mail.³ Ms. N E D was reached by telephone, but she said she could not participate and asked for a reschedule. The case was rescheduled to April 26, 2016. On that date, a person at Ms. N E D's number said she was not available but that he would tell her that she was being called for her hearing, and give her the opportunity to call back. She did not, and the hearing went forward in her absence.⁴

Kenneth Cramer, an investigator employed by DPA's Fraud Control Unit, represented DPA at the hearing. Two witnesses, Eligibility Technician Amanda Holton of the Alaska program and Christina Terry of the Washington program, testified on behalf of DPA. Exhibits 1-10 were admitted into evidence without objection and without restriction.

¹ Though still commonly called Food Stamps, the program is now officially known as the Supplemental Nutrition Assistance Program ("SNAP").

² Ex. 3.

³ Ex. 1, p. 3; Ex. 3; Ex. 4; Ex. 6. Mr. N E D signed for one of the certified mail packets.

⁴ Once proper notice has been given, the Food Stamps regulations allow a hearing to be held without the participation of the household member alleged to have committed the IPV. *See* 7 CFR § 273.16(e)(4). The same regulations set out circumstances under which the recipient may seek to vacate this decision if there was good cause for the failure to appear.

This decision concludes that DPA proved by clear and convincing evidence that Ms. N E D committed a first Intentional Program Violation of the Food Stamp program. She must be barred from Food Stamps for twelve months.

II. Facts

Ms. N E D applied for Food Stamps in Washington on September 28, 2015.⁵ She collected and used those benefits in Alaska and Washington over the next three and a half months.⁶ On October 7, 2015, just nine days after filing her Washington application and after making eight transactions with her Washington benefits card over the previous week, she applied for Food Stamps in Alaska.⁷ The application asked if she had received Food Stamps in Alaska or any other state, and she responded “no.”⁸ In an eligibility interview that was extensively reported in the agency case notes, she likewise did not disclose drawing Food Stamps from Washington, or even having resided in that state.⁹

Ms. N E D’s Alaska application was approved, and she began receiving Food Stamps in Alaska in October 2015, continuing until December 2015.¹⁰ There was an overlap of three months between her Alaska and Washington benefits. DPA has calculated that she received a total of \$555 in benefits during those three months that she could not have received had the Alaska DPA known about the Washington benefits.

DPA learned of Ms. N E D’s receipt of double benefits through its own investigation in December of 2015, and the matter was referred for a fraud investigation.¹¹ This proceeding ensued.

III. Discussion

Apart from exceptional circumstances that do not apply here, it is prohibited by federal law for a person to participate in the Food Stamp program from two different households or in two different states in the same month.¹² It is also prohibited to obtain Food Stamp benefits by

⁵ Ex. 9.

⁶ Testimony of Christina Terry; Ex. 9.

⁷ Ex. 7, 9.

⁸ Ex. 7, p. 14.

⁹ Ex. 8.

¹⁰ Ex. 10; testimony of Amanda Holton.

¹¹ Ex. 2.

¹² See 7 C.F.R. §§ 273.3(a), 271.2. The exceptional circumstances are when a person is residing in a battered persons’ shelter and was, during the same month, a member of the abuser’s household. Ms. N E D’s applications in the record show that this was not applicable in her case.

making false or misleading statements or by concealing or withholding facts.¹³ In this case, DPA seeks to show such a violation to be an Intentional Program Violation, or IPV. To establish an IPV, DPA must prove the elements of that IPV by clear and convincing evidence.¹⁴ No evidence has been offered that Ms. N E D has ever been found to have committed a prior IPV, and therefore the alleged IPV will be evaluated as a first-time violation.

Except for someone with prior IPV's in his or her record or in certain other narrow circumstances that apparently do not apply here,¹⁵ federal Food Stamp law provides that a twelve-month disqualification must be imposed on any individual proven to have “intentionally . . . made a false or misleading statement, or misrepresented, concealed or withheld facts” in connection with the program.¹⁶

It is clear that Ms. N E D applied for Food Stamps in Alaska at a time when she was still receiving and using Food Stamp benefits from Washington, falsely mentioning nothing about this situation on her application or at her interview, even in response to a direct question. This was a misrepresentation. The remaining issue is whether the misrepresentation was intentional.

Ms. N E D failed to appear for or testify at her hearing, but her intent can be deduced from circumstantial evidence. Ms. N E D was actually receiving and using Washington benefits to make purchases at the same time she was applying for, and began receiving, duplicate benefits in Alaska. This cannot have been a mere oversight, since she would have been holding and using two EBT cards at the same time. Her failure to disclose her Washington Food Stamps was clearly intentional, and she has therefore committed a first IPV.

IV. Conclusion and Order

Ms. N E D has committed a first time Intentional Program Violations of the Food Stamp program. She is therefore disqualified from receiving Food Stamp benefits for a twelve-month period, and is required to reimburse DPA for benefits that were overpaid as a result of the

¹³ See, e.g., 7 U.S.C. §2015(b).

¹⁴ 7 C.F.R. § 273.16(e)(6); 7 AAC 45.585(e).

¹⁵ DPA has not sought to bring this case under the ten-year disqualification that applies to individuals proven to have “made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple food stamp benefits simultaneously.” See 7 U.S.C. § 2015(j); 7 C.F.R. § 273.16(b)(5). The evidence in this case might have supported such a penalty (*cf. In re N.Y.T.*, OAH No. 12-0280-ADQ (Comm’r of Health & Soc. Serv. 2012)

(<http://aws.state.ak.us/officeofadminhearings/Documents/ADQ/ADQ120280.pdf>), but since it was not mentioned in the notice to Ms. N E D, nor argued at the hearing, it cannot be applied now.

¹⁶ 7 C.F.R. §§ 273.16(b)(1)(i); 273.16(c)(1).

Intentional Program Violation.¹⁷ The Food Stamp disqualification period shall begin July 1, 2016.¹⁸ This disqualification applies only to Ms. N E D, and not to any other individuals who may be included in her household.¹⁹ For the duration of the disqualification period, Ms. N E D's needs will not be considered when determining Food Stamp eligibility and benefit amounts for her household. However, she must report her income and resources so that they can be used in these determinations.²⁰

DPA shall provide written notice to Ms. N E D and any remaining household members of the benefits they will receive during the period of disqualification, or that they must reapply because the certification period has expired.²¹

If over-issued Food Stamp benefits have not been repaid, Ms. N E D or any remaining household members are now required to make restitution.²² If Ms. N E D disagrees with DPA's calculation of the amount of over-issuance to be repaid, she may request a separate hearing on that limited issue.²³

Dated this 27th day of April, 2016.

Signed
Christopher Kennedy
Administrative Law Judge

Adoption

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 11th day of May, 2016.

By: Signed
Name: Lawrence A. Pederson
Title/Agency: Admin. Law Judge, OAH

[This document has been modified to conform to the technical standards for publication.]

¹⁷ 7 C.F.R. § 273.16(b)(1)(i); 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

¹⁸ See 7 C.F.R. § 273.16(b)(13) and (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9th Cir. 1995). Insofar as 273.16(e)(9)(ii) is inconsistent with this result, it must be disregarded as contrary to statute, as discussed in *Garcia* and in *Devi v. Senior and Disabled Serv. Div.*, 905 P.2d 846 (Or. App. 1995).

¹⁹ 7 C.F.R. § 273.16(b)(11).

²⁰ 7 C.F.R. § 273.11(c)(1).

²¹ 7 C.F.R. § 273.16(e)(9)(ii).

²² 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

²³ 7 C.F.R. § 273.15.